H. R. 5036

To direct the Administrator of General Services to reimburse certain jurisdictions for the costs of obtaining paper ballot voting systems for the general elections for Federal office to be held in November 2008, to reimburse jurisdictions for the costs incurred in conducting audits or hand counting of the results of the general elections for Federal office to be held in November 2008, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 17, 2008

Mr. HOLT (for himself, Mr. Tom Davis of Virginia, Mr. Wexler, Mr. Emanuel, Mr. Conyers, Mr. Lewis of Georgia, Mrs. Maloney of New York, Ms. Schakowsky, Mr. Waxman, Mr. George Miller of California, Mr. Abercrombie, Mr. Inslee, Ms. Baldwin, Mr. Farr, Mr. Ryan of Ohio, Mr. Honda, Mr. Doggett, Mr. Blumenauer, Mr. Hare, Mr. Loeb, Mr. Sires, Mr. Frank of Massachusetts, Mr. Weiner, Mr. Berman, Mr. DeFazio, Ms. Hirono, Mr. Grijalva, Mr. Davis of Illinois, Mr. Rothman, Mr. Olver, Mr. Fattah, Mr. Doyle, Ms. Kaptur, Ms. Watson, Mr. Hinchey, Mr. Klein of Florida, and Mr. Crowley) introduced the following bill; which was referred to the Committee on House Administration, and in addition to the Committee on Science and Technology, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To direct the Administrator of General Services to reimburse certain jurisdictions for the costs of obtaining paper ballot voting systems for the general elections for Federal office to be held in November 2008, to reimburse jurisdictions for the costs incurred in conducting audits or
hand counting of the results of the general elections for Federal office to be held in November 2008, and for other purposes.

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Be it enacted by the Senate and House of Repre sentatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Emergency Assistance for Secure Elections Act of 2008”.

SEC. 2. PAYMENTS TO CERTAIN JURISDICTIONS CONDUCTING 2008 GENERAL ELECTIONS.

(a) Reimbursement for Conversion to Paper Ballot Voting System.—

(1) In general.—The Administrator of General Services shall pay to each eligible jurisdiction an amount equal to the sum of the following:

(A) The documented reasonable costs paid or incurred by such jurisdiction to replace any voting systems used to conduct the general elections for Federal office held in November 2006 that did not use or produce a paper ballot verified by the voter or a paper ballot printout verifiable by the voter at the time the vote is cast with paper ballot voting systems.

(B) The documented reasonable costs paid or incurred by such jurisdiction to obtain non-tabulating ballot marking devices that are ac-
cessible for individuals with disabilities in accordance with the requirements of section 301(a)(3) of the Help America Vote Act of 2002.

(C) The documented reasonable costs paid or incurred by such jurisdiction to obtain ballot marking stations or voting booths for the protection of voter privacy.

(D) The documented reasonable costs paid or incurred by such jurisdiction to obtain paper ballots.

(E) The documented reasonable costs paid or incurred by such jurisdiction to obtain precinct-based equipment that tabulates paper ballots or scans paper ballots.

(F) The documented reasonable administrative costs paid or incurred by such jurisdiction that are associated with meeting the requirements for an eligible jurisdiction.

(2) ELIGIBLE JURISDICTION DEFINED.—In this subsection, an “eligible jurisdiction” means a jurisdiction that submits to the Administrator (and, in the case of a county or equivalent jurisdiction, provides a copy to the State), at such time and in such
form as the Administrator may require, an application containing—

(A) assurances that the jurisdiction conducted regularly scheduled general elections for Federal office in November 2006 using (in whole or in part) a voting system that did not use or produce a paper ballot verified by the voter or a paper ballot printout verifiable by the voter at the time the vote is cast;

(B) assurances that the jurisdiction will conduct the regularly scheduled general elections for Federal office to be held in November 2008 using only paper ballot voting systems;

(C) assurances that the jurisdiction has obtained or will obtain a sufficient number of non-tabulating ballot marking devices that are accessible for individuals with disabilities in accordance with the requirements of section 301(a)(3) of the Help America Vote Act of 2002;

(D) assurances that the jurisdiction has obtained or will obtain a sufficient number of ballot marking stations or voting booths for the protection of voter privacy;
(E) assurances that the jurisdiction has obtained or will obtain a sufficient number of paper ballots;

(F) such information and assurances as the Administrator may require to make the determinations under paragraph (1); and

(G) such other information and assurances as the Administrator may require.

(3) Determinations of Reasonableness of Costs.—The determinations under paragraph (1) of whether costs paid or incurred by a jurisdiction are reasonable shall be made by the Administrator in consultation with the Election Assistance Commission.

(4) Paper Ballot Voting System Defined.—In this subsection, a “paper ballot voting system” means a voting system that uses a paper ballot marked by the voter by hand or a paper ballot marked by the voter with the assistance of a non-tabulating ballot marking device described in paragraph (1)(B).

(b) Reimbursement for Provision of Emergency Paper Ballots by Jurisdictions Using Direct Recording Electronic Voting Systems.—
(1) IN GENERAL.—The Administrator shall pay to each eligible jurisdiction an amount equal to the documented reasonable costs paid or incurred by such jurisdiction to obtain, deploy, and tabulate emergency paper ballots (and related supplies and equipment) that may be used in the event of the failure of a direct recording electronic voting system in the regularly scheduled general elections for Federal office to be held in November 2008.

(2) ELIGIBLE JURISDICTION DEFINED.—In this subsection, an “eligible jurisdiction” means a jurisdiction that submits to the Administrator (and, in the case of a county or equivalent jurisdiction, provides a copy to the State), at such time and in such form as the Administrator may require, an application containing—

(A) assurances that the jurisdiction will post, in a conspicuous manner at all polling places at which a direct recording electronic voting system will be used in such elections, a notice stating that emergency paper ballots are available at the polling place and that a voter is entitled to use such a ballot upon the failure of a voting system;
(B) assurances that the jurisdiction counts each such emergency paper ballot cast by a voter as a regular ballot cast in the election, and does not treat it (for eligibility purposes) as a provisional ballot under section 302(a) of the Help America Vote Act of 2002, unless the individual casting the ballot would have otherwise been required to cast a provisional ballot;

(C) such information and assurances as the Administrator may require to make the determinations under paragraph (1); and

(D) such other information and assurances as the Administrator may require.

(3) Determination of Reasonableness of Costs.—The determinations under paragraph (1) of whether costs paid or incurred by a jurisdiction are reasonable shall be made by the Administrator in consultation with the Election Assistance Commission.

(e) Amounts.—There are authorized to be appropriated to the Administrator $500,000,000 for payments under this section. Any amounts appropriated pursuant to the authorization under this subsection shall remain available until expended.
SEC. 3. PAYMENTS FOR CONDUCTING MANUAL AUDITS OF
RESULTS OF 2008 GENERAL ELECTIONS.

(a) Payments.—

(1) Eligibility for payments.—If a State, county, or equivalent location conducts manual audits of the results of any of the regularly scheduled general elections for Federal office in November 2008 (and, at the option of the State or jurisdiction involved, conducts audits of elections for State and local office and State and local ballot initiatives and referenda held at the same time as such election) in accordance with the requirements of this section, the Administrator shall make a payment to the State, county, or equivalent location in an amount equal to the documented reasonable costs incurred by the State, county, or equivalent location in conducting the audits.

(2) Certification of compliance and costs.—

(A) Certification required.—In order to receive a payment under this section, a State, county, or equivalent location shall submit to the Administrator (and, in the case of a county or equivalent jurisdiction, shall provide a copy to the State), in such form as the Administrator may require, a statement containing—
(i) a certification that the State, county, or equivalent location conducted the audits in accordance with all of the requirements of this section;

(ii) a statement of the reasonable costs incurred by the State, county, or equivalent location in conducting the audits; and

(iii) such other information and assurances as the Administrator may require.

(B) Amount of Payment.—The amount of a payment made to a State, county, or equivalent location under this section shall be equal to the reasonable costs incurred by the State, county, or equivalent location in conducting the audits.

(C) Determination of Reasonableness of Costs.—The determinations under this paragraph of whether costs incurred by a State, county, or equivalent location are reasonable shall be made by the Administrator in consultation with the Election Assistance Commission.

(3) Timing of Payments.—The Administrator shall make the payment required under this section to a State, county, or equivalent location not later
than 30 days after receiving the statement submitted by the State, county, or equivalent location under paragraph (2).

(4) Authorization of Appropriations.—
There are authorized to be appropriated to the Administrator $100,000,000 for payments under this section. Any amounts appropriated pursuant to the authorization under this subsection shall remain available until expended.

(b) Audits Described.—

(1) In general.—An audit conducted in accordance with this section is an audit administered by a State, county, or equivalent location, without advance selection of the precincts or notice of the precincts selected, consisting of the random selection of precincts or alternative audit units to be audited and hand counting of the votes cast on the paper ballots used in the election (including paper ballot printouts verifiable by the voter at the time the vote is cast) attributable to those precincts or alternative audit units, and the comparison of the results of those hand counts with the corresponding final unofficial vote count (as defined by the State, county, or equivalent location) of the votes cast in the election.
(2) Completeness.—With respect to each precinct or alternative audit unit audited in accordance with the method selected under subsection (c)(2), the State, county, or equivalent location shall ensure that a voter verified paper ballot or paper ballot printout verifiable by the voter at the time the vote is cast is available for every vote cast in the precinct or alternative audit unit, and that the tally produced by counting all of those paper ballots by hand is compared with the corresponding final unofficial vote count (as defined by the State, county, or equivalent location) announced with respect to that precinct or audit unit in the election.

(3) Determination of Entity Conducting Audits; Independence Standards.—An audit administered by a State, county, or equivalent location in accordance with this section shall be overseen by an entity selected for such purpose by the State, county, or equivalent location in accordance with such criteria as the State, county, or equivalent location considers appropriate consistent with the requirements of this section, except that the entity must meet a general standard of independence as defined by the State, county, or equivalent location.
(4) References to election auditor.—In this section, the term “Election Auditor” means, with respect to a State, county, or equivalent location, the entity selected by the State, county, or equivalent location under paragraph (3).

(c) Number of ballots counted under audit.—

(1) In general.—The hand counts of the paper ballots administered by the Election Auditor of a State, county, or equivalent location under this section with respect to an election shall occur in at least 3 percent of all precincts or equivalent locations (or alternative audit units used in accordance with the method provided for under paragraph (2)) in which ballots were cast in the election.

(2) Use of alternative sampling mechanism.—Notwithstanding paragraph (1) (and subject to the completeness requirement set forth in subsection (b)(2)), a State, county, or equivalent location may adopt and apply an alternative sampling mechanism to determine the number of paper ballots which will be subject to hand counts in accordance with this section with respect to an election, so long as the alternative sampling mechanism uses the paper ballots verified by voters or paper ballot print-
outs verifiable by voters at the time the vote is cast
to conduct the audit and the Director of the Na-
tional Institute of Standards and Technology or a
panel of 3 independent statisticians appointed by the
Election Auditor of the State, county, or equivalent
jurisdiction determines that the alternative sampling
mechanism will be at least as statistically effective in
ensuring the accuracy of the election results as the
sample size specified under paragraph (1).

(d) Process For Administering Audits.—

(1) In General.—The Election Auditor of a
State, county, or equivalent location shall oversee
the administration of an audit conducted under this
section in accordance with the following procedures:

(A) The Election Auditor shall commence
the audit within 48 hours after the State, coun-
ty, or equivalent location announces the final
unofficial vote count (as defined by the State, county, or equivalent location) in each precinct
in which votes are cast in the election which is
the subject of the audit.

(B) The Election Auditor shall complete
the audit, resolve discrepancies discovered in
the audit, and submit the audit report required
under subsection (f)(1), prior to the certifi-
cation by the State, county, or equivalent location of the results of the election.

(C) Within each precinct or alternative audit unit, and subject to the completeness requirement set forth in subsection (b)(2), the audit shall include all ballots (including absentee ballots in accordance with the procedure set forth in subsection (e)(3) or otherwise, early ballots, and provisional ballots) cast by all individuals who voted in or are under the jurisdiction of the precinct or alternative audit unit with respect to which the audit takes place, without regard to the time, place, or manner in which the votes were cast.

(2) USE OF ELECTION PERSONNEL.—In administering the audits, the Election Auditor may utilize the services of jurisdiction personnel, including election administration personnel and poll workers, without regard to whether or not the personnel have professional auditing experience.

(3) LOCATION.—The Election Auditor shall administer an audit conducted under this section at the location where the ballots cast in the election are stored and counted after the date of the election, or such other appropriate and secure location agreed
upon by the Election Auditor and the individual who
is responsible under State law for the custody of the
ballots, and in the presence of the personnel who
under State law are responsible for the custody of
the ballots.

(4) ADDITIONAL AUDITS IF CAUSE SHOWN.—

(A) IN GENERAL.—If the Election Auditor
finds that any of the hand counts administered
under this section do not match the final unof-
ficial vote count of the results of an election,
the Election Auditor shall oversee the adminis-
tration of hand counts under this section of
such additional precincts (or equivalent juris-dic-
tions) as the Election Auditor considers appro-
priate (in accordance with the procedures de-
scribed in subparagraph (B)) to resolve any
concerns resulting from the audit and ensure
the accuracy of the results.

(B) ESTABLISHMENT AND PUBLICATION
OF PROCEDURES GOVERNING ADDITIONAL AU-
DITS.—Prior to the date of the regularly sched-
uled general election for Federal office held in
November 2008, a State, county, or equivalent
location shall establish and publish procedures
for carrying out the additional audits under this
subsection, including the means by which the State, county, or equivalent location shall resolve any concerns resulting from the audit with finality and ensure the accuracy of the results.

(5) **Public Observation of Audits.**—Each audit conducted under this section shall be conducted in a manner that allows public observation of the entire process, including reasonable advance notice, sufficient to confirm but not interfere with the proceedings.

(e) **Selection of Precincts.**—

(1) **In General.**—Except as provided in paragraph (3), the selection of the precincts in the State, county, or equivalent location in which the Election Auditor of the State, county, or equivalent location shall oversee the administration of hand counts in an audit conducted under this section shall be made by the Election Auditor after the final unofficial vote count (as defined by the State, county or equivalent location) has been announced and on an entirely random basis using a uniform distribution in which all precincts in the State, county, or equivalent location have an equal chance of being selected, in accordance with procedures adopted by the State, county, or equivalent location, except that, consistent
with the other requirements of this paragraph, in the case of an audit conducted by the State, at least one precinct or alternative audit unit shall be selected at random in each county or equivalent jurisdiction.

(2) Public selection.—The random selection of precincts under paragraph (1) shall be conducted in public, at a time and place announced in advance.

(3) Mandatory selection of precincts established specifically for absentee ballots.—If a State, county, or equivalent location establishes a separate precinct for purposes of counting the absentee ballots cast in an election and treats all absentee ballots as having been cast in that precinct, and if the State, county, or equivalent location does not make absentee ballots sortable by precinct and include those ballots in the hand count administered with respect to that precinct, subject to the completeness requirement set forth in subsection (b)(2), the State, county, or equivalent location may divide absentee ballots into audit units approximately equal in size to the average precinct in the State, county, or equivalent location in terms of the number of ballots cast, and shall randomly select and include at least 3 percent of those audit units
in the audit carried out in accordance with this section.

(4) **Deadline for Adoption of Procedures.**—Prior to the date of the regularly scheduled general election for Federal office held in November 2008, a State, county, or equivalent location shall adopt and publish the procedures described in paragraph (1).

(f) **Publication of Results.**—As soon as practicable after the completion of an audit conducted under this section, the Election Auditor of a State, county, or equivalent location shall submit to the Administrator the results of the audit, and shall include in the submission a comparison of the results of the election attributable to the precinct or alternative audit unit as determined by the Election Auditor under the audit and the final unofficial vote count attributable to the precinct or alternative audit unit as announced by the State, county, or equivalent location and all undervotes, overvotes, blank ballots, and spoiled, voided or cancelled ballots, as well as a list of any discrepancies discovered between the initial, subsequent, and final hand counts overseen by the Election Auditor and such final unofficial vote count and any explanation for such discrepancies, broken down by the types of ballots which were subject to the audit.
(g) Reports by Administrator.—The Administrator shall publish promptly all reports on the results of audits conducted under this section that are submitted pursuant to this section.

(h) Deadline for Approval of Alternative Ballot Sampling Methods by National Institute of Standards and Technology.—The Director of the National Institute of Standards and Technology shall, not later than 30 days after receiving a request by a State, county, or equivalent location for approval of an alternative ballot sampling method under subsection (c)(2), respond to the State, county, or equivalent location with confirmation as to whether or not the method is at least as statistically effective in ensuring the accuracy of the election results as the procedure described in subsection (c)(1).

SEC. 4. PAYMENTS FOR CONDUCTING HAND COUNTS OF RESULTS OF 2008 GENERAL ELECTIONS.

(a) Payments.—

(1) Eligibility for payments.—If a State, county, or equivalent location tallies the results of any regularly scheduled general election for Federal office in November 2008 by conducting a hand count of the votes cast on the paper ballots used in the election (including paper ballot printouts verifiable
by the voter at the time the vote is cast) in accord-
ance with the requirements of this section, the Ad-
ministrator shall make a payment to the State, 
county, or equivalent location in an amount equal to 
the documented reasonable costs incurred by the 
State, county, or equivalent location in conducting 
the hand counts.

(2) Certification of Compliance and 
Costs.—

(A) Certification Required.—In order 
to receive a payment under this section, a 
State, county, or equivalent location shall sub-
mit to the Administrator (and, in the case of a 
county or equivalent jurisdiction, shall provide a 
copy to the State), in such form as the Admin-
istrator may require, a statement containing—

(i) a certification that the State, coun-

ty, or equivalent location conducted the 
hand counts in accordance with all of the 
requirements of this section;

(ii) a statement of the reasonable 
costs incurred by the State, county, or 
equivalent location in conducting the hand 
counts; and
(iii) such other information and assurances as the Administrator may require.

(B) Amount of payment.—The amount of a payment made to a State, county, or equivalent location under this section shall be equal to the reasonable costs incurred by the State, county, or equivalent location in conducting the hand counts.

(C) Determination of reasonableness of costs.—The determinations under this paragraph of whether costs incurred by a State, county, or equivalent location are reasonable shall be made by the Administrator in consultation with the Election Assistance Commission.

(3) Timing of payments.—The Administrator shall make the payment required under this section to a State, county, or equivalent location not later than 30 days after receiving the statement submitted by the State, county, or equivalent location under paragraph (2).

(4) Authorization of appropriations.—There are authorized to be appropriated to the Administrator $30,000,000 for payments under this section. Any amounts appropriated pursuant to the
authorization under this subsection shall remain available until expended.

(b) Hand Counts Described.—

(1) In general.—A hand count conducted in accordance with this section is a count of all of the paper ballots on which votes were cast in the election (including paper ballot printouts verifiable by the voter at the time the vote is cast), including votes cast on an early, absentee, emergency, and provisional basis, which is conducted by hand to determine the winner of the election and is conducted without using electronic equipment or software.

(2) Completeness.—With respect to each jurisdiction in which a hand count is conducted, the State, county, or equivalent location shall ensure that a voter verified paper ballot or paper ballot printout verifiable by the voter at the time the vote is cast is available for every vote cast in the jurisdiction.

(c) Process for Conducting Hand Counts.—

(1) In general.—In order to meet the requirements of this section, a hand count of the ballots cast in an election shall be conducted in accordance with the following procedures:
(A) On the date of the election, the jurisdiction shall conduct an initial hand count of the ballots cast in the election, using the ballots which are eligible to be counted in the election as of the time the polls are closed.

(B) Any ballot which is eligible to be counted in the election but which is not included in the initial count conducted under subparagraph (A), including a provisional ballot cast by an individual who is determined to be eligible to vote in the election or an absentee ballot received after the date of the election but prior to the applicable deadline under State law for the receipt of absentee ballots, shall be subject to a hand count in accordance with this section and added to the tally conducted under subparagraph (A) not later than 48 hours after the ballot is determined to be eligible to be counted.

(C) The hand count shall be conducted by a team of not fewer than 2 individuals who shall be witnessed by at least one observer sitting at the same table with such individuals. Except as provided in paragraph (2), all such
individuals shall be election officials of the jurisdiction in which the hand count is conducted.

(2) Use of Other Personnel.—An individual who is not an election official of the jurisdiction in which a hand count is conducted under this section may serve on a team conducting the hand count or may serve as an observer of a team conducting the hand count if the jurisdiction certifies that the individual has completed such training as the jurisdiction deems appropriate to conduct or observe the hand count (as the case may be).

(3) Location.—The hand counts conducted under this section of the ballots cast in an election shall be conducted—

(A) in the case of ballots cast at a polling place on the date of the election, at the polling place at which the ballots were cast; or

(B) in the case of any other ballots, at the office of the chief election official of the jurisdiction conducting the hand count.

(4) Information Included in Results.—
Each hand count conducted under this section shall produce the following information with respect to the election:

(A) The vote tally for each candidate.
(B) The number of overvotes, undervotes, spoiled ballots, and blank ballots cast (or their equivalents, as defined by the State, county or equivalent location).

(C) The number of write-in ballots and the names written in on such ballots pursuant to State law.

(D) The total number of ballots cast.

(E) A record of judgement calls made regarding voter intent.

(5) PUBLIC OBSERVATION OF HAND COUNTS.—Each hand count conducted under this section shall be conducted in a manner that allows public observation of the entire process (including the opening of the ballot boxes or removal of machine-printed ballots from their containers, the sorting, counting, and notation of results, and the announcement of final determinations) sufficient to confirm but not interfere with the proceedings.

(6) ESTABLISHMENT AND PUBLICATION OF PROCEDURES.—Prior to the date of the regularly scheduled general election for Federal office held in November 2008, a State, county, or equivalent location shall establish and publish procedures for carrying out hand counts under this subsection.
(d) Announcement and Posting of Results.—Upon the completion of a hand count conducted under this section, the State, county, or equivalent location shall announce the results to the public and post them on a public Internet site.

(e) Use of Hand Count in Certification of Results.—The State shall use the results of the hand count conducted under this section for purposes of certifying the results of the election involved. Nothing in this section may be construed to affect the application or operation of any State law governing the recount of the results of an election.


(a) Study, Testing, and Development.—The Director of the National Institute of Standards and Technology (hereafter in this section referred to as the “Director”) shall study, test, and develop products and practices that ensure the accessibility of paper ballot verification and casting for individuals with disabilities, for voters whose primary language is not English, and for voters with difficulties in literacy, including the mechanisms themselves and the processes through which the mecha-
nisms are used. In carrying out this subsection, the Director shall specifically investigate existing and potential methods or devices, including non-electronic devices, that will assist such individuals and voters in creating voter-verified paper ballots, presenting or transmitting the information printed or marked on such ballots back to such individuals and voters in an accessible form, and enabling the voters to cast the ballots.

(b) REPORT.—Not later than June 30, 2009, the Director shall submit a report to Congress on the results of the studying, testing, and development of products and practices under subsection (a).

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Director to carry out this section $3,000,000, to remain available until expended.

SEC. 6. DEFINITIONS.

In this Act—

(1) the term “Administrator” means the Administrator of General Services; and

(2) the term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.